

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1493 Substance Abuse and Mental Health Services
SPONSOR(S): Health Care Services Policy Committee; Rogers and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 2612

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee	7 Y, 0 N, As CS	Schoolfield	Schoolfield
2)	Public Safety & Domestic Security Policy Committee	(ref. removed)		
3)	Health & Family Services Policy Council	(W/D)		
4)	Full Appropriations Council on General Government & Health Care		Massengale	Leznoff
5)				

SUMMARY ANALYSIS

This bill makes substantive changes to Florida Statutes: chapter 394 relating to Mental Health, chapter 397 relating to Substance Abuse Services, and section 766.101 relating to Medical Review Committees. In addition, several other sections of statute are amended to make conforming changes.

The bill:

- Deletes a requirement for a contract between the Department of Children and Family Services (DCF) and residential treatment facilities. These facilities were previously licensed and paid through DCF, but this function has since been shifted to the Agency for Health Care Administration.
- Sets client eligibility for substance abuse and mental health services by establishing priority populations to receive these services. The population groups include adults and children who receive substance abuse or mental health services.
- Revises legislative intent for the substance abuse services program.
- Revises service definitions in chapter 397, Florida Statutes.
- Makes substantial changes to the licensure process for substance abuse programs and would require licenses to be issued by service component, rather than the current process of issuing a license by facility (physical location).
- Requires DCF to coordinate licensure inspections with other state agencies.
- Provides a process for medication assisted treatment services. This replaces the previous process relating to medication and methadone maintenance treatment.
- Updates language in chapter 397 to replace "client" with "individual" and "service district" with "sub-state entity." DCF is no longer using the service district terminology and has reorganized into circuits (judicial) and zones.
- Authorizes DCF to establish a medical review committee for quality assurance of substance abuse, mental health and forensic programs.

The bill appears to have no fiscal impact on state or local governments. However, private sector service providers will experience a change in the number and amount of licensure fees (see Fiscal Analysis section).

The bill provides an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The publicly funded substance abuse and mental health services in Florida are primarily provided through the Department of Children and Family Services (DCF). The 2003 Legislature established separate substance abuse and mental health program offices within DCF under the Assistant Secretary for Substance Abuse and Mental Health. The services from these programs are provided statewide through a district structure.¹ The adult mental health treatment facilities (institutions) report to the Assistant Secretary for Substance Abuse and Mental Health at headquarters.

Staff in the substance abuse and mental health program offices is responsible for the planning and administration of publicly funded mental health and substance abuse services. These programs also serve as the primary contact to the federal Department of Health and Human Services for all issues pertaining to substance abuse and mental health. Most of the services for these programs are provided through contracts implemented at the circuit level with community substance abuse and mental provider organizations and professionals. In addition, the state mental health treatment facilities provide mental health and some substance abuse services directly to clients.

Substance Abuse Program

Chapters 394 and 397, Florida Statutes, provide authority for the provision of substance abuse services to children and adults. Alcohol addiction (34 percent) accounts for the highest percentage of treatment admissions for adults to the substance abuse program followed by cocaine/crack (27 percent) and marijuana (21 percent). Marijuana accounts for the highest percentage of adolescent admissions (76 percent) followed by alcohol (16 percent). In recent years, there has been an upsurge in prescription drug misuse and abuse and the use of methamphetamines.²

Substance abuse services fall in three categories including prevention, treatment and detoxification services. Prevention services are designed to address risk factors that are known to contribute to substance abuse. Services to children may be provided in schools and include parents. The services to adults are targeted to the workplace, parents, pregnant women and other high risk groups. Treatment services include residential programs, outpatient treatment and recovery support services. Detoxification services are designed to eliminate substance use. These services use medical and

¹ Recently aligned as 6 Regions and 20 judicial circuits

² Substance Abuse and Mental Health Services Plan: 2007-2010, January 2007.

clinical procedures to assist children and adults to withdraw from the physical and psychological effects of substance abuse. In addition, the program is responsible for licensure and regulation of the substance abuse provider system. The licensure process, which includes setting standards, is delineated in chapter 397, Florida Statutes, and chapter 65D-30, Florida Administrative Code. A range of programs and facilities are licensed, including but not limited to, addiction receiving facilities, detoxification, intensive inpatient treatment, residential treatment, day or night treatment, outpatient treatment, medication and methadone treatment programs. The program issues an average of 1,650 licenses per year.³

Mental Health Program

The Mental Health program comprises a system of care for persons with mental illnesses in accordance with chapters 394 and 916, Florida Statutes. The program includes mental health services to adults and children, as well as oversight of the state adult mental health treatment facilities and the Sexually Violent Predator program. The system of care for individuals with mental illness or co-occurring substance abuse and mental illnesses is organized as follows:

Adult Community Mental Health—This includes outpatient care (typically at community mental health centers) and residential care such as crisis stabilization units, limited license alternative treatment facilities, and short term residential treatment units.

Children's Community Mental Health—This includes outpatient care and residential care, such as in therapeutic group homes and the inpatient psychiatric programs. The Children's Mental Health program also manages and coordinates contracts for the Juveniles Incompetent to Proceed program for children who have been committed by the courts to the department for competency restoration services.

Civil and Forensic State Mental Health Treatment Facilities—The Mental Health program operates or oversees services provided through seven large mental health facilities for adults who have been committed to the department by the courts. Three of the seven facilities are managed by the Mental Health program while the other four facilities operate under department contracts with private companies. The facilities provide treatment and services to three distinct populations.

- The civil population receives services at a level of care that is not available in the community.
- The forensic services population includes individuals who are not guilty by reason of insanity or incompetent to proceed through the criminal justice system.
- The sexually violent predator population program serves people who are committed under the Jimmy Ryce Act as sexually violent predators.

Effects of the Bill

The bill makes substantive changes to Florida Statutes: c Chapter 394 relating to Mental Health, chapter 397 relating to Substance Abuse Services, and section 766.101 relating to Medical Review Committees. The bill makes changes as follows:

Section 1

The bill makes conforming changes to match substantive changes.

Section 2 (Contract Requirement for Residential Treatment Centers)

The current statutory definition of "residential treatment center for children and adolescents" in section 394.67, Florida Statutes, includes a requirement that the provider must be under contract to DCF. Residential treatment facilities are funded and licensed by the Agency for Health Care Administration (AHCA) under the authority of section 394.875, Florida Statutes, and further governed by 65E-9, Florida Administrative Code. Therefore, a contractual requirement with DCF is no longer needed. The

³ Fiscal note to Bill Analysis of HB 1493 by Department of Children and Families, March 9, 2009.

bill deletes the requirement for a contract with DCF from the definition and inserts the requirement to be licensed by AHCA.

Section 3 (Mental Health and Substance Abuse Priority Populations and Enrollment requirements)

In current statute, s.394.674(1), eligibility criteria for the substance abuse and mental health program is based on “target groups” approved by the Legislature pursuant to s. 216.0166. However, this section of Chapter 216, F.S. was repealed in 2000. The repealed statute required agencies to submit performance standards as part of the budgeting process. Within these standards, agencies were directed to identify the customers, clients, and users of each program. These performance standards were subsequently approved by the Legislature.

This bill designates the priority populations as the eligibility criteria to receive substance abuse and mental health services. The populations in the bill are substantial similar to the populations currently served. The effect of this provision will clarify and set in statute which individuals are eligible to receive services from the substance abuse and mental health programs.

Current statute gives the department rule writing authority to implement a client eligibility and fee collection process. This section of the bill provides rule authority for the department to implement client enrollment requirements. The department plans to require additional data collection from service providers as part of the client enrollment process to improve client tracking.

Sections 4 and 5

These sections are technical and conforming changes.

Section 6 (Legislative Findings and Intent for “Marchman Act” part I, chapter 397, Florida Statutes)

This section of the bill revises existing legislative intent, purposes and goals relating to substance abuse services.

Section 7 (Definitions)

The definitions in section 397.311, Florida Statutes, provide definitions of key terms and services used throughout chapter 397. This bill makes substantial changes and deletions to the definition section:

The bill revises the following definitions in chapter 397:

- Addictions Receiving Facility—The definition is now less specific regarding service standards and the requirement for these facilities to be state owned, state operated or state contracted is deleted.
- Residential Treatment—The definition is now less specific regarding service and facility requirements.
- Day and Night Treatment—The definition is revised to day or night treatment with community housing. In addition, this definition is now more specific regarding service standards.
- Medication and Methadone Maintenance Treatment—The definition is changed to Medication Assisted Treatment for Opiate Addiction.

The bill also deletes or adds the following:

- Deletes the definition of Assessment and adds a definition of Clinical Assessment.
- Deletes the definition of Client and adds a definition of Individual.
- Deletes the definition of Quality Assurance and adds a definition for Quality Improvement.
- Adds new definitions for Recovery, Recovery Support, Screening, Service component, Sub-state entity, System of Care and Treatment Plan.

Section 8 (Duties of the Department)

This section of the bill adds the Departments of Juvenile Justice, Health, and Financial Services and AHCA to the list of departments that DCF is to develop partnerships with to increase resources and services.

DCF currently provides federal funding to substance abuse coalitions. A coalition does not conduct substance abuse programs or services, but gathers information, convenes experts, and facilitates community action to achieve substance abuse prevention and reduction goals. The bill requires DCF to develop a certification process for substance abuse prevention coalitions by rule.

The bill also deletes authority for a managed care pilot project in District 9, Palm Beach County section 397.321(20), Florida Statutes. This project is not in operation.

Sections 9 and 10

The bill makes conforming changes to match substantive changes.

Section 11 (Licensure Application, Background Screening)

This section makes technical changes.

Section 12 (Licensure Exemptions)

This section specifies that advanced registered nurse practitioners already licensed under part I, chapter 464, Florida Statutes, and crisis stabilization units licensed under section 394.875, Florida Statutes, are exempt from substance abuse licensure.

Section 13 (Licensure of Government Programs)

This section adds the Department of Juvenile Justice to the list of departments required to be licensed to operate substance abuse programs.

Sections 14 and 15 (Licensure Process; Fees)

Currently, a substance abuse provider is licensed by the physical location of their service components. This bill provides for a licensure process that issues licenses by service component instead of the physical location of the provider. The bill repeals section 397.409, Florida Statutes, and transfers text with revisions to this section and updates the language to provide the process for issuing probationary, regular and interim licenses by service component. The change to licensing service components is anticipated to reduce the number of licenses and applications by 40 percent.⁴ DCF has indicated in their bill analysis that they intend to adopt a rule and raise fees to cover any revenue shortfall in fees caused by the new licensure process.

The bill provides that the new licensure process will take effect upon adoption of a rule governing the licensure process. This is intended to delay the new licensure process until the new fee structure is promulgated in rule. However, the language in the bill does not specify that the rule must include a fee increase to cover the shortfall (see comments section).

The bill also deletes the requirement to phase in fee ranges for providers over a five-year period.

Section 16 (Inspection of Licensed Providers)

This section of the bill requires DCF to notify other state agencies of scheduled licensure inspections to improve coordination of licensure inspections.

Section 17 (Revocation of Licenses)

This section specifies that if a license to a service component is revoked, then the provider may not apply to relicense that service component for one year. This waiting period is the same as current law for the licenses of a physical location.

Section 18

This section makes conforming changes.

Section 19 (Quality Improvement Programs)

The bill changes the name of quality assurance to quality improvement programs. This section also deletes the requirement to incorporate the peer review process as a model for improving performance.

⁴Fiscal note to Bill Analysis of HB 1493 by Department of Children and Families, March 9, 2009.

Section 20 (Medication Assisted Treatment Services)

This section updates language and specifies that providers of medication treatment services are now providers of medication assisted treatment services for opiate addiction. This new term is not defined in the bill or otherwise in statute.

The bill also provides for the use of medication assisted treatment for other substance abuse disorders and provides rule authority and minimum requirements for administering this program, including the provision of medication by nurses (see comments section).

Section 21

This section makes technical and conforming changes.

Section 22 (Background Checks)

This section provides an exemption to background checks for owners, officers and directors of Department of Corrections inmate substance abuse programs.

Sections 23 thru 48

These sections contain updated wording, technical and conforming changes. Much of the wording changes are deleting *client* to add *individual* and deleting *service district* to add *sub-state* entity. DCF is no longer using the service district terminology and has reorganized into circuits (judicial) and zones.

Section 49 (Medical Review Committee)

Section 766.101, Florida Statutes, provides authority for the Department of Health, the Department of Corrections, and other professional groups, organizations, and medical service providers, including mental health treatment facilities, and community mental health centers, as defined in chapter 394, Florida Statutes, to convene a medical review committee for the purpose of continuous quality assurance. The reports of these committees are confidential and exempt from the provisions of section 119.07(1), Florida Statutes, and the committee members are immune from liability. DCF does not have this authority at the department level under section 766.101, Florida Statutes. The bill provides for the establishment of a medical review committee at DCF to provide peer review, utilization review and mortality review of treatment services provided in mental health, substance abuse and forensic programs under chapters 394, 397 and 916, Florida Statutes.

Section 50 (Target Groups)

This section repeals section 394.9081, Florida Statutes, which directs DCF on setting target groups for substance abuse and mental health services. The bill sets target groups for both substance abuse and mental health in section 3.

B. SECTION DIRECTORY:

- Section 1. Amends s. 212.055, F.S., relating to discretionary sales surtax.
- Section 2. Amends s. 394.67, F.S., relating to a definition of residential treatment facilities.
- Section 3. Amends s. 394.674, F.S., relating to client eligibility.
- Section 4. Amends s. 394.9085, F.S., relating to behavioral provider liability.
- Section 5. Amends s. 397.301, F.S., relating to the short title.
- Section 6. Amends s. 397.305, F.S., relating to legislative finding and intent.
- Section 7. Amends s. 397.311, F.S., relating to definitions.
- Section 8. Amends s. 397.321, F.S., relating to duties of the department.
- Section 9. Amends s. 397.331, F.S., relating to definitions and intent.
- Section 10. Amends s. 397.401, F.S., relating to licensure penalties.
- Section 11. Amends s. 397.403, F.S., relating to license application.
- Section 12. Amends s. 397.405, F.S., relating to licensure exemptions.
- Section 13. Amends s. 397.406, F.S., relating to licensure of government operated programs.
- Section 14. Amends s. 397.407, F.S., relating to licensure process and fees.
- Section 15. Repeals s. 397.409, F.S., relating to licensure.
- Section 16. Amends s. 397.411, F.S., relating to inspections.
- Section 17. Amends s. 397.415, F.S., relating to denial, suspension or revocation of licenses.

- Section 18. Amends s. 397.416, F.S., relating to qualified professionals.
- Section 19. Amends s. 397.419, F.S., relating to quality assurance programs.
- Section 20. Amends s. 397.427, F.S., relating to medication treatment services.
- Section 21. Amends s. 397.431, F.S., relating to client cost
- Section 22. Amends s. 397.451, F.S., relating to background checks.
- Section 23. Amends s. 397.471, F.S., relating to facility standards.
- Section 24. Amends s. 397.501, F.S., relating to rights of individuals.
- Section 25. Amends s. 397.581, F.S., relating to unlawful activities relating to assessment
- Section 26. Amends s. 397.601, F.S., relating to voluntary admissions.
- Section 27. Amends s. 397.6751, F.S., relating to service provider responsibilities.
- Section 28. Amends s. 397.6752, F.S., relating to referrals of individuals.
- Section 29. Amends s. 397.6758, F.S., relating to release of client.
- Section 30. Amends s. 397.6773, F.S., relating to dispositional alternatives after protective custody.
- Section 31. Amends s. 397.6797, F.S., relating to dispositional alternatives after emergency.
- Section 32. Amends s. 397.6799, F.S., relating to disposition of minors.
- Section 33. Amends s. 397.6819, F.S., relating to involuntary assessment and stabilization.
- Section 34. Amends s. 397.6821, F.S., relating to extensions for involuntary assessment and stabilization.
- Section 35. Amends s. 397.6822, F.S., relating to disposition after involuntary assessment.
- Section 36. Amends s. 397.697, F.S., relating to court determinations.
- Section 37. Amends s. 397.6971, F.S., relating to early release from involuntary treatment.
- Section 38. Amends s. 397.6975, F.S., relating to extension of involuntary treatment
- Section 39. Amends s. 397.6977, F.S., relating to disposition of individuals.
- Section 40. Amends s. 397.702, F.S., relating to local ordinances for treatment.
- Section 41. Amends s. 397.706, F.S., relating to screening, assessment and disposition of juveniles.
- Section 42. Amends s. 397.801, F.S., relating to substance abuse coordination.
- Section 43. Amends s. 397.821, F.S., relating to early intervention councils for juveniles.
- Section 44. Amends s. 397.94, F.S., relating to information and referral networks.
- Section 45. Amends s. 397.95, F.S., relating to children's substance abuse services.
- Section 46. Amends s. 397.97, F.S., relating to children's substance abuse services models.
- Section 47. Amends s. 397.99, F.S., relating to prevention partnerships with schools.
- Section 48. Amends s. 440.102, F.S., relating to drug free workplace.
- Section 49. Amends s. 766.101, F.S., relating to medical review committees.
- Section 50. Repeals s. 394.9081 F.S., relating to target groups.
- Section 51. Provides for an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

A reduction in the amount of \$233,297 in licensure fee revenue is anticipated if fees are not raised by DCF to cover the shortfall based on the reduced number of licenses. DCF reported revenue collections for Fiscal Year 2007-08 in licensure fees at \$583,243.⁵ DCF estimates a 40 percent reduction in revenues and licenses as a result of this bill. DCF indicates in their fiscal analysis of HB 1493 that they plan to increase licensure fees through rule promulgation for substance abuse providers to offset any revenue reductions. The bill requires that the new licensure process begin after adoption of a rule that governs the process. However, the bill is not specific that the new rule must raise fees to cover the revenue shortage.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁵ Department of Children and Families, Fiscal Year 2009-10 Legislative Budget Request, Schedule I Trust Funds Available.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because the licensure process will be based on service components rather than location, the bill decreases the *number* of licenses for approximately 80 percent of the substance abuse service providers that have multiple locations. The *amount* of the fees will be increased, however, which will affect the remaining 20 percent of the providers that have single locations.⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The provides rule-making authority for:

- Client enrollment requirements under section 394.674, Florida Statutes.
- Clinical treatment services under section 397.311 (17), Florida Statutes.
- Licensure process to include fees and categories of licenses and standards and timeframes for licensure under s.397.407, Florida Statutes.
- Medication assisted treatment service under section 397.427, Florida Statutes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill specifies that the new licensure process will take effect upon adoption of a rule governing the licensure process. This is intended to delay the new licensure process until the new fee structure is promulgated in rule. However, the language in the bill does not specify that the rule must include a fee increase to cover the shortfall. This may require more specific language in the bill to link the raising of fees by rule promulgation to the start of the new licensure process.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Health Care Services Policy Committee adopted nine amendments as follows.

- Removes legislative intent language related to legislative commitment to funding.
- Amends language to specify intent to establish services to persons with co-occurring disorders.
- Restores and revises definitions used in chapter 397, Florida Statutes, which were deleted in the bill. These include Addictions Receiving Facility, Detoxification, Intensive Inpatient Treatment,

⁶ Fiscal Note to Bill Analysis of HB 1493 by Department of Children and Families, March 9, 2009.

Residential Treatment, Day and Night Treatment, and Outpatient Treatment. In addition the amendment adds definitions to the statute for intensive outpatient treatment and medication assisted treatment and medication assisted treatment for opiate addiction.

- Provides clarification to original bill language that DCF is to develop a certification process by rule for community substance abuse prevention coalitions.
- Restores current law related to denial of license to an owner, director, or chief financial officer who has not received a clear background screening or been otherwise exempted.
- Removes from the bill a reference to rule writing authority for standards regarding treatment for individuals with co-occurring disorders in crisis stabilization units.
- Restores current law which requires the fees from licensure of service components must cover 50 percent of the cost of regulating the service components. This amendment also requires DCF in the licensure process rule to carefully consider potential adverse impact on small not for profit providers.
- Delays the implementation of the service component licensure process until the adoption of the rule governing the licensure process and fees.
- Changes the title to an act related to substance abuse and mental health services.

The bill was reported favorably and the analysis has been updated to reflect the committee substitute.